



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2004

Ms. Mary Winston
Public Information Officer
Texas Savings and Loan Department
2601 North Lamar, Suite 201
Austin, Texas 78705

OR2004-3148

Dear Ms. Winston:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199541.

The Texas Savings and Loan Department (the "department") received a request for information regarding the loan volume of a specific mortgage broker for the last three years. You claim that the submitted information is excepted from disclosure under section 552.110 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially we note that the submitted documents contain confidential information subject to section 552.101 of the Government Code.¹ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as section 156.213 of the Finance Code. This section states:

(a) Each licensed mortgage broker shall file an annual report with the commissioner on a form prescribed by the commissioner. The report must include:

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(1) data on loan origination in this state for the mortgage broker and each loan officer sponsored by the mortgage broker; and

(2) any other information required by the commissioner.

(b) Information contained in the annual report related to loan origination volume or other trade information is confidential and may not be disclosed by the commissioner or any other employee of the Savings and Loan Department.

Fin. Code § 156.213.² The submitted documents consist of annual reports filed with the department by a mortgage broker. Loan origination volume information in annual reports filed with the department is considered confidential under section 156.213(b). Therefore, the loan origination volume information contained within the submitted documents is excepted from release pursuant to section 552.101 of the Government Code in conjunction with section 156.213 of the Finance Code. We have marked this information accordingly.³

The submitted information also contains an e-mail address obtained from a member of the public. Section 552.137 makes certain e-mail addresses confidential. Section 552.137 provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

²We note that two different sections of the Finance Code are denominated by section 156.213. One was added to the Finance Code by the Act of May 26, 2001, 77th Leg., R.S., ch. 337, § 9, 2001 Tex. Gen. Laws 610, 614. The other section 156.213, which is quoted above, was added to the Finance Code by the Act of May 28, 2001, 77th Leg., R.S., ch. 407, § 3, 2001 Tex. Gen. Laws 740, 741.

³Because we dispose of this issue under section 552.101 of the Government Code, we do not address your arguments regarding section 552.110.

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that this particular member of the public has affirmatively consented to the release of the e-mail address contained in the submitted materials. The department must, therefore, withhold the marked e-mail address under section 552.137.

In summary, the marked loan origination volume information is confidential by law. This information must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 156.213 of the Finance Code. The marked e-mail address must be withheld pursuant to section 552.137 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

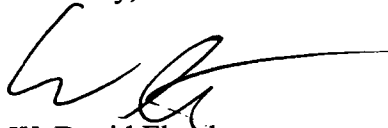
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. David Floyd
Assistant Attorney General
Open Records Division

WDF/sdk

Ref: ID# 199541

Enc. Submitted documents

c: Ms. Christina Scott
5901 Dorset Drive
Plano, Texas 75093
(w/o enclosures)